I accordingly allowed the appeal, and as the case was argued both in the lower Court and on appeal purely on points of law, and there was no dispute as to the facts, I directed a conviction to be recorded, and imposed a nominal fine of one dollar or one day's R.I. in default. I imposed a nominal penalty, as the appeal was brought as a test case, and the respondent has been put to be a good deal of expense.

Appeal allowed.

PUBLIC PROSECUTOR vs. ONG CHO TECK.

[App. Crim. Juris. (Terrell, Ag. C.J., F.M.S., McElwaine, C.J., S.S. & Aitken, Ag. J.A.) June 19, 1941]

Motor Vehicles (Construction and Use) Rules, 1937, Rules 56 and 80 — Permitting a motor vehicle to be used on the public road with inefficient brakes — Meaning of "permit."

The accused was charged with permitting a motor vehicle to be used on the public road with brakes the system of which was not maintained in good and efficient working order, an offence under Rule 56 and punishable under Rule 80 of the Motor Vehicles (Construction and Use) Rules 1937. The accused in his defence said that he left the car entirely to his servant.

Held, that the offence was committed as the owner had permitted the use of the car and the brakes were in fact defective. "Permits" in the Rules did not have the same meaning as "Permits knowing of the breach of the Rule." It meant that the owner consciously allowed his driver to take the car out. The prohibition against the brakes being defective was absolute. The owner would not however have been liable if the car had been taken out without his permission.

Cases referred to:—

(1) *Mahmoud v. Ispahani* (1921) 2 K.B. 718.
(2) *Cotterill v. Penn* (1936) 1 K.B. 53.
(3) *R. v. Dacey* 27 Cr. App. Reports 86.
(4) *In re K. Syed Mohamed* Singapore Miscellaneous Application No. 3 of 1935.
(5) *R. v. G. H. Kiat* (1938) 7 M.L.J. 150.

Case referred by Magistrate.

J. F. Draper for the Public Prosecutor.

R. Ramani for the accused.

The judgment of the Court of Appeal was read by:

Terrell Ag., C.J. F.M.S.—This is a case referred by the Magistrate under section 62 of the Courts Enactment, arising out of the trial of Ong Cho Teck, on a charge of permitting a motor vehicle to be used on the public road with brakes the system of which was not maintained in good and efficient working order, an offence under Rule 56 and punishable under Rule 80 of the Motor Vehicles (Construction & Use) Rules, 1937.

When charged, the accused said:—

> "I left the car entirely to my servant. There is no point in hearing the case. If the brakes were bad I am guilty. I agree and I do not dispute the fact that the brakes were bad."

The learned Magistrate heard argument as to the effect of this plea, and he delivered a considered judgment in which he said:—

> "As the charge was of 'permitting' I hold that some evidence of the state of mind of the defendant must be given and held therefore that a conviction as charged could not be sustained on the plea tendered."

The Magistrate found from the plea that the defendant left the care of the car to his servant absolutely, and in so doing he failed in the duty imposed upon him by rules 56 and 80. "I therefore held him guilty of the offence of failing to comply with the provisions of rule 56 in that the braking system of his car was admittedly defective." The learned Magistrate held that such failure was a failure to comply with an absolute prohibition imposed on all owners of motor cars, and that the accused was liable for the act of his servant in using the car in question on the road whilst its braking system was defective, although he may have had no personal knowledge of the defect.

In the opinion of the Court the conviction was correct, but should have been of the offence charged.

The relevant provisions of the Rules under which the charge was laid, that is Rules 56 and 80 in Part III of the Motor Vehicles (Construction & Use) Rules 1937, (*Allen* volume VIII, pages 3204 and 3208) read as follows:—

> 56. "Every part of every braking system and of the means of operation thereof fitted to a motor vehicle shall, at all times while the motor vehicle is used on a road, be maintained in good and efficient working order and shall be properly adjusted."
>
> 80. "If any person uses or causes or permits to be used on any road a motor vehicle in contravention of or fails to comply with any of the requirements of the rules contained in Part III, he shall be guilty of an offence and liable on conviction to a fine of two hundred dollars."

Rule 56 imposes an absolute duty on the owner of a motor car, but it is not by itself a penal rule. Rule 80 contemplates four possible offences:—

(a) using a motor car in contravention of the rule;

(b) causing a motor car to be so used;
(c) permitting a motor car to be so used; and
(d) failing to comply with the requirements of the rules.

It is no doubt true that the accused could have been charged and convicted under (d), but he was not so charged, and the Court is asked to say what is the proper construction to be placed on the word 'permit'.

It would appear that the words 'using' 'causing' and 'permitting' must all involve some conscious act on the part of the person charged. That does not mean that 'permits' in the Rules has the same meaning as "permits knowing of the breach of the Rule." It means that the owner consciously allows his driver to take the car out. But the prohibition against the brakes being defective is absolute. If therefore an owner permits the use of the car, and the brakes are in fact defective, the offence has been committed. On the other hand, the owner would not be liable if the car had been taken out without his permission, because he would not have done the conscious act without proof of which no offence could be established.

It appears to the Court that this interpretation of Rule 80 is in accordance with the trend of the decisions in England. As Scrutton L.J. said in *Mahmoud v. Ispahani*[1].

> "When the prohibition is for public purposes, as a general rule, unless there is the word 'knowingly' or something to show that the offence can only be committed by a person who knows he is committing an offence, the person must take the risk."

Similarly in *Cotterill v. Penn*[2] the accused was charged under the Larceny Act of 1861, section 23, with 'unlawfully and wilfully killing a homing pigeon', the plea of the accused was that he thought it was a wood-pigeon that might damage his crops. This was held to be no defence, and Lord Hewart said:—

> "In my opinion although the section says 'unlawfully and wilfully', it does not require the element of mens rea beyond the point that the facts must show an intention on the part of the person accused to do the act forbidden, which was here that of shooting. It seems to me to be immaterial that the bird which the respondent shot was of a different kind from that which he thought he was shooting."

R. v. Dacey[3] was a slightly different case, and the offence was that of 'knowingly possessing an explosive substance.' It was held to be sufficient for the prosecution to prove that the possession was wilful, and that it was not necessary to prove that the accused had knowledge of the explosive nature of the substance. The principle is, however, the same. As stated above 'permits' per se involves a conscious act, whereas 'possess' does not necessarily imply conscious possession. It had to be proved therefore that the possession was with the knowledge of the accused, just as in the present case it had to be proved that the accused knowingly permitted his driver to take out the car, but that is as far as the mens rea goes. It does not extend to the circumstances against which the Statute has decreed an absolute prohibition.

Reference may also be made to a decision of Sir Walter Huggard C.J., in In re *K. Syed Mohamed*[4]. This case is not reported but is referred to in a commentary in 4 M.L.J. at page xxxvi The petitioner had been charged and convicted inter alia under Rule 1 (a) of the Rules made under section 16 of Ordinance 129 (Traction Engines and Motor Cars). The rule provided that:—

> "No person shall use or permit to be used on a public thoroughfare any motor car or traction engine ....unless it is fitted with two independent and efficient brakes in good working order."

The learned C.J., held that the word 'permit' refers to the use of vehicles, and that once it is established that a person permits the use of such vehicles without efficient brakes the offence is complete. With this judgment the Court respectfully agrees.

Mr. Ramani (to whom the Court is indebted for presenting arguments as amicus curiae in this case and in Selangor Criminal Reference 1/40) argued that *R. v. G. H. Kiat*[5] had been wrongly decided. In that case the rule under which the accused was charged read as follows:-

> "No owner....shall permit it (a dog) to be out of doors within the infected area unless it is led by a chain....or wears a muzzle etc."

It appeared from the evidence that the accused went out leaving his dogs properly tied up, that he authorised his servant to let the dogs loose at 8 p.m., but gave strict instructions that they should be muzzled when this was done. The instructions were however disobeyed, and at 9 p.m., the dogs were seen out of doors neither led by a chain nor muzzled.

In the opinion of the Court the same principles were applied to that case as have been applied to the present case. In *Kiat's* case the owner consciously gave over the charge of the dog to a servant, as in this case he gave over charge of the car to his driver. In neither case was the accused knowingly guilty of any intention to break the law, but the prohibition being absolute, the offence was established.

Order accordingly.